JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **99-04-08-004 / NOT PRECEDENTIAL**
ID: **P9700010**
DATE: **04-08-99**
DISPOSITION: **DENIED**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the records and file, including the record of the hearing, and the exhibits received into evidence, the undersigned finds:

1. On or about February 27th, 1996, Protestant started operating a floral shop on the premises of ANONYMOUS Air Force Base in BIGCITY, Oklahoma.

2. The first two pre-printed sales tax report forms (March and April, 1996) forwarded to Protestant listed the mailing address as the home address of the President of Protestant, in CITYA, Oklahoma.

3. The third pre-printed form listed the mailing address as the business address of Protestant on ANONYMOUS Air Force Base.

4. Each of the first three report forms were long sales tax report forms. PROTESTANT's CPA testified that he modified these report forms to show a total sales tax rate of 8.375% after discussion with the Tax Commission concerning the correct rate to charge. PROTESTANT's CPA also testified that he contacted the Tax Commission during this time period to inquiry as to the necessity of a long sales tax report form for the business.

5. The fourth sales tax report form (June, 1996) forwarded to Protestant was a short sales tax report form. The rate appearing on the form was 7.5%. According to PROTESTANT's OPERATOR, Protestant receives the report forms in the later part of the reporting month. The testimony also indicates that PROTESTANT's OPERATOR and PROTESTANT's CPA meet between the 5th and 15th of the following month to prepare the monthly sales tax report. Although the witnesses were unsure of the date Protestant's cash register was reprogrammed to charge a sales tax rate of 7.5% instead of 8.375%, they were certain it was changed between the date of receipt of the report form and the date of their meeting in July, 1996. PROTESTANT's CPA testified that he contacted the Tax Commission after receipt of the report form to make sure 7.5% was the correct rate.

6. The sales tax report forms forwarded to Protestant for the months of July, 1996 through September, 1996, reflected a pre-printed sales tax rate of 7.5%.

7. The October, 1996 sales tax report form forwarded to Protestant reflected a pre-printed rate of 8.375%. PROTESTANT's CPA testified that he modified the report to reflect a rate of 7.5% after discussing the proper rate to charge with the Tax Commission.

8. According to PROTESTANT's CPA, after several more conversations with the Tax Commission Protestant's cash register was reprogrammed to charge a rate of 8.375%.

9. The amount in controversy in this cause is $505.86, inclusive of penalty and interest, assessed against Protestant for the months of August and October, 1996. The October assessment not only involves the rate dispute, but a loss of remuneration in the amount of $124.05 due to the late filing of the report.

10. Protestant timely protested the proposed assessments.

11. Protestant was also assessed additional sales tax for the month of September, 1996. Protestant paid the assessed amount without protest. The Division maintains the assessment was due to the rate dispute. Protestant believes the assessment was due to the late filing of the September report.

ISSUES AND CONTENTIONS

The issue presented for decision is whether the Division should be estopped from adjusting Protestant's August and October, 1996 sales tax reports and assessing additional sales tax to compensate for the difference between the rate charge by Protestant and the correct rate.

Protestant does not dispute that the correct sales tax rate for ANONYMOUS Air Force Base during the time period involved was 8.375%. Protestant contends that it should not be punished for the errors committed by the Tax Commission. In support of this contention, Protestant argues that the sales tax rate for ANONYMOUS Air Force Base does not appear in the rate book published by the Tax Commission, that it operated in compliance with the report forms and instructions it received from the Tax Commission and that it did not collect the sales tax it is being asked to pay. Protestant further argues that the June, 1996 sales tax report represents notice of a rate change.

The Division contends that the assessment should be sustained. In support of this contention, the Division argues that Protestant's contention is not a valid defense to the assessment of taxes since estoppel does not lie against the state acting in its sovereign capacity. The Division further argues that Protestant was put on notice of the correct sales tax rate since it collected and remitted sales tax at such rate during the months of March through May, 1996 and that Protestant was never notified of a rate change by the Tax Commission. The Division also argues that the assessment for the month of September, 1996, put Protestant on notice of the correct rate.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, § 207.

2. The essential elements of an equitable estoppel are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the knowledge, actual or constructive, of the real facts; (3) the intention, or at least the expectation, that such conduct will be acted upon by, or influence, the other party; (4) lack of knowledge and the means of knowledge of the truth as to the facts in question by the party to whom the conduct is made; (5) reliance, in good faith, upon the conduct; and (6) action or inaction based thereon of such a character as to change the position or status of the party to his injury, detriment, or prejudice. See, ***Board of County Commissioners of Marshall County v. Snellgrove***, 428 P.2d 272 (Okl. 1967). See, generally, 28 Am Jur 2d ***Estoppel and Waiver*** § 35.

3. As a general rule, estoppel does not apply against the state acting in its sovereign capacity, and the Tax Commission as an agency of the state is not bound by the unauthorized acts of its officers; ***State ex rel. Cartwright v. Dunbar***, 618 P.2d 900, 911 (Okl. 1980), or because of the mistakes or errors of its employees, ***State ex rel. Oklahoma Tax Commission v. Emery***, 645 P.2d 1048, 1051 (Okl. 1982). An exception is applicable, however, where the facts and circumstances show the interposition of estoppel will further some prevailing principle of public policy or interest; ***Burdick v. Independent School District***, 702 P.2d 48 (Okl. 1985), or where the officers and employees act within their authority, ***State ex rel. Commissioners of Land Office v. Lamascus***, 263 P.2d 426 (Okl. 1953).

4. Here, Protestant failed to prove the essential elements of an equitable estoppel. No evidence has been presented to show "a false representation or concealment of material facts." At most, Protestant received incorrect advice regarding a question of law; i.e., the correct sale tax rate to be charged and collected on sales occurring on the premises of ANONYMOUS Air Force Base. Accordingly, estoppel does not prevent the assessment of additional sales tax against Protestant.

5. Protestant's protest should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest be denied. It WAS further DETERMINED that the assessed amount of additional sales tax be fixed as the deficiency due and owing and that the penalty and interest assessed and accruing be waived.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.